IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/04/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Criminal Appeal No.433 of1995
and Crl.A.Nos. 436, 437 & 551 of 1995

L.V. Anandan .. Appellant in
C.A.No.433 of 1995

K. Hashim .. Appellant in
C.A.No.436 of 1995

Janardhanam .. Appellant in
C.A.No.437 of 1995

M. Periasamy .. Appellant in
C.A.No.551 of 1995

-Vs-

State rep. by
Inspector of Police
C.B.C.I.D. Police Respondent in
Madras. .. all C.As.

PRAYER: Appeal against the judgment dated 27.4.1995 made in S.C.No.25 of 1993 on the file of the learned III Additional Sessions Judge, Madras.

!For Appellant in
C.A.No.433 of 1995 : Mr.K. Thennan
C.A.No.436 of 1995 : Mr. Mohan
For Mr.C. Sreedharan

C.A.No.437 of 1995 : Mr.M. Muniratna Naidu
C.A.No.551 of 1995 : Mr.A. Thangamani

^For Respondent : Mr.V. Jayaprakash Narayanan
Govt. Advocate (Crl.Side)

:J U D G M E N T

Heard.

I - DETAILS OF THE JUDGMENT UNDER CHALLENGE

2.1. For the purpose of convenience, the parties are arrayed as per their rank before the trial Court.

2.2. The appellants in these appeals are fourth, second, third and first accused respectively in S.C.No.25 of 1993 on the file of III Additional Sessions Judge, Madras.

2.3. The appellants are convicted and sentenced by judgment dated 27 .4.1995 in S.C.No.25 of 1993, as follows.

(i) the first accused therein (appellant in C.A.No.551/95) was convicted for the offences punishable under Sections 120-B r/w 489-A, 489-C and 489-D IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.5000/-, in default, to undergo two years rigorous imprisonment for the said offence; and also convicted for the offence punishable under Section 489-C IPC and sentenced to undergo five years rigorous imprisonment for the same; and directed both the sentences to run concurrently;

(ii) the second accused (appellant in C.A.No.436 of 1995) was convicted for the offences punishable under Section 120-B r/w 489-A, 489-C and 489-D IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.5000/-, in default to undergo two years rigorous imprisonment for the said offence; and also convicted for the offence punishable under Section 489-D IPC and sentenced him to undergo seven years rigorous imprisonment for the same; and directed both the sentences to run concurrently;

(iii)the third accused (appellant in C.A.No.437 of 1995) was convicted for the offences punishable under Section 120-B r/w 489-A, 489-C and 489-D IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.5000/-, in default to undergo two years rigorous imprisonment for the said offence; and also convicted for the offence punishable under Section 489-C and 489-D IPC and sentenced to undergo five years and seven years rigorous imprisonment for the said offences respectively; and directed all the sentences to run concurrently; and

(iv) the fourth accused (appellant in C.A.No.433 of 1995) was convicted for the offences punishable under Sections 120-B r/w 489-A, 489-C and 489-D IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.5000/-, in default to undergo two years rigorous imprisonment for the said offence; and also convicted for the offences under Section 489-A IPC and sentenced for seven years rigorous imprisonment for the same; and directed both the sentences to run concurrently.

II - THE CASE OF THE PROSECUTION - IN BRIEF

3.1. The case of the prosecution, in brief, is stated as follows:

On receiving secret information, the investigating officer (PW19) conducted a raid at the house of Rajan Chettiar at No.6, Palaiamman Koil Street, Villivakkam, Chennai, between 1.30 pm and 3.00 pm on 3.8.19 82. During his search, he recovered eight bundles of counterfeit US Dollars of 20 denomination (MOs.4 to 11), under Mahazar (Ex.P1) in the presence of one Thiruvengadam (PW3).

3.2. Immediately, a complaint was lodged which was registered as FIR (Ex.P28) in Crime No.32 of 1982 on the file of Inspector of Police, CBCID, Madras - 4.

3.3. Based on the information furnished by Rajan Chettiar, P.W.19 proceeded to Golden Cafe lodge at Poonamallee High Road, Chennai, and reached the lodge at 4.30 p.m. on 3.8.1982, conducted a search at Room No.72, in the presence of one P.S.Kumar (P.W.4), the Manager of Golden Cafe Lodge and arrested the first and fourth accused and recovered three bundles of counterfeit US Dollars of 20 denomination (MO14) under Mahazar (Ex.P2) in the presence of PW4.

3.4. On the basis of the confessional statement obtained from the first accused (Ex.P29), P.W.19 proceeded to Canara Timber Corporation, No.176, Sydenhams Road, Periamet, Chennai, a shop owned by Ravindran (P.W.1), and recovered five bundles of counterfeit US Dollars of 20 denomination (MO1 series) from PW1, under Mahazar (Ex.P30) in the presence of Thirumal and Jain.

3.5. From Canara Timber Corporation, P.W.19 proceeded to Iyyappa Lodge at Hunters Road, Vepery, Chennai, and reached there at 6.30 p.m. where he recovered six bundles of counterfeit US Dollars of 20 denomination from the second accused, under Ex.P31 and arrested the second accused.

3.6. Thereafter, P.W.19 proceeded to Vasantham Press at No.96, Portuguese Church Street, Chennai, owned by the third accused for further investigation. On the way, P.W.19 arrested Rajendra Menon (PW2), on being identified by the first accused, near Padmanabha Theatre bus stop and while searching P.W.2, P.W.19 recovered 85 Nos. of counterfeit US Dollars of 20 denomination (MO3 series) under Mahazar (Ex.P32) in the presence of Thirumal and Jain.

3.7. Then, P.W.19 proceeded to Vasantham Press at No.96, Portuguese Street, Chennai, owned by the third accused, and since it was late night on 3.8.1982, he could not conduct any search in the said Press and therefore, he arrested the third accused and sealed the premises of Vasantham Press.

3.8. On 4.8.1982, based on the confession of the first accused, P.W.19 proceeded to RJVA press at No.27, Balakrishna Mudali Street, Vyasarapadi, Chennai, owned by one Anjana Devi, conducted a search and recovered printing inks in green, yellow, light green, and light yellow colours, and printing blocks (MOs.35 to 42) under Mahazar (Ex.P33) in the presence of Anjana Devi, whose signature in the Mahazar (Ex.P33) was

identified by P.W.6, the husband of Anjana Devi.

3.9. Concisely, Rajan Chettiar was arrested at 3.30 p.m. on 3.8.1992 at No.6, Palaiamman Koil Street, Villivakkam, Chennai; the first and fourth accused were arrested at 4.30 pm at Room No.72, Golden Cafe Lodge, Poonamallee High Road, Chennai; Ravindran (P.W.1) was arrested at Canara Timber Corporation, No.176, Sydenhams Road, Periamet, Chennai, owned by him, at 6.00 pm on 3.8.1982; the second accused was arrested at Room No.13, Iyyappa Lodge, Hunters Road, Vepery, Chennai, owned by P.W.7, at 6.30 pm on 3.8.1982; Rajendra Menon (P.W.2) was arrested near Padmanabha Theatre bus stop, Chennai, at about 7.30 pm on 3 .8.1982; and the third accused was arrested at Vasantham Press, No.96 , Portuguese Church Street, Chennai, at late night on 3.8.1982.

3.10. Rajan Chettiar, the first accused, the fourth accused, P.W.1, the second accused, P.W.2 and the third accused were produced before the Magistrate on 4.8.1982 and remanded to judicial custody till 10.8 .1982.

3.11. On 11.8.1982, PW19 examined Chinnaiah (P.W.8), an artist and collected further materials, based on which, PW19 conducted another search at Vasantham Press, No.96, Portuguese Church Street, Chennai, on 12.8.1982 at about 1.20 pm and recovered printing inks (MOs.23 and 24) under Mahazar (Ex.P7) in the presence of P.W.12.

3.12. In continuation of the investigation, P.W.19 conducted a search at about 4.00 p.m. on 17.8.1982 in the house of the second accused at No.23A, Bhavani Nagar, Red Hills, Chennai, and recovered printing blocks etc. (MOs.43 to 54) under Mahazar (Ex.P34) in the presence of Reddy and K.K.Arumugam.

3.13. At 6.30 p.m. on the same day (17.8.1982), PW19 conducted another search in the house of Rajan Chettiar at Villivakkam, Chennai, and recovered Spectacle pouch and certain incriminating receipts in the pouch (MOs.55 and 56 respectively) under Mahazar (Ex.P35) in the presence of M.A.Kadar and Reddy.

3.14. On 20.8.1982, the confessional statements of P.Ws.1 and 2 (Exs.P20 and P23 respectively) under Section 164 Cr.P.C., were recorded by P.W.17, based on which, P.Ws.1 and 2 were pardoned, by an order dated 5.10.1983 passed under Section 306 Cr.P.C. by P.W.18 (Exs.P27 and P26 respectively).

3.15. Accordingly, FIR in Crime No.32 of 1982 was filed against seven accused initially, namely the accused/appellants herein, Rajan Chettiar, Ravindran (P.W.1) and Rajendra Menon (P.W.2); but, since Rajan Chettiar died even before the framing of charges, the complaint against him got abated and Ravindran (P.W.1) and Rajendra Menon (P.W.2) were treated as approvers, as per Exs.P27 and P26 respectively.

III - CHARGE SHEET

4. Based on the material evidence recorded and collected by the investigating officer (P.W.19) in the above crime, a final report was filed on

19.4.1985. However, the charges were framed only on 8.11.1993, the translated version of the same reads as follows:

The first accused, second accused, third accused and fourth accused were charged:

"(1) that the first accused, second accused, third accused and fourth accused, along with deceased Rajan Chettiar and approvers Ravindran and Rajendra Menon, jointly, between May and August 1982, at Villivakkam, Red Hills and Vyasarpadi, Chennai, agreed to do an illegal act, viz., to counterfeit American Dollars of 20 denomination and knowingly performed an act of processing of counterfeit and had in your possession the counterfeit currency notes, knowing the same to be a counterfeit and intending to use the same as genuine, had in your possession machinery, instruments and materials to counterfeit American Dollars of 20 denomination for the purpose of being used, knowing that it was intended to be used for counterfeiting currency note and the same was done pursuant to the agreement and thus you thereby committed an offence punishable under Section 120-B read with Sections 489-A, 489 -C and 489-D, IPC and direct you to be tried on the said charge;
(2) that the first accused on 3.8.1982, in continuation of the conspiracy, at No.72, Golden Cafe Lodge, Poonamallee High Road, Chennai, had in your possession 249 counterfeit American Dollars of 20 denomination knowing the same to be counterfeit and intending to use the same as genuine and thereby committed an offence punishable under Section 489-C, IPC and within this Court's cognizance;
(3) that the second accused on 4.8.1982, in continuation of the conspiracy, at RJVA Press, No.21, Balakrishna Mudali Street, Vyasarpadi, Chennai, had in your possession blocks for printing counterfeit US Dollars of 20 denomination and thereby committed an offence punishable under Section 489-D, IPC and within this Court's cognizance;
(4) that the third accused on 3.8.1982, in continuation of conspiracy, at Room No.13, Iyyappa Lodge, Hunters Road, had in your possession 603 counterfeit US Dollars of 20 denomination knowing the same to be counterfeit and intending to use the same as genuine and thereby committed an offence punishable under Section 489-C, IPC and within this Court's cognizance;
(5) that the third accused on 17.8.1982, in continuation of conspiracy, at Door No.23A, Bhavani Nagar, Sengunram, had in your possession important materials such as negative, block, wooden frame, counterfeit US Dollars of 20 denomination and thereby committed an offence punishable under Section 489-D, IPC and within this Court's cognizance; and
(6) that between May 1982 and August 1982, in continuation of the conspiracy, at Vasantham Press, Door No.96, Portuguese Church Street, Chennai, knowingly performed a part of the process of counterfeiting US Dollars 20 denomination and thereby committed an offence punishable under Section 489-A, IPC, and within this Court's cognizance.

IV - EVIDENCE RELIED UPON BY THE PROSECUTION

5.1. During trial, the prosecution examined 19 witnesses (P.Ws. 1 to 19), including two approvers (P.W.1 and P.W.2) and the investigating officer

(P.W.19), marked 35 documents (Exs.P1 to P35) and produced 5 6 material objects (MOs 1 to 56).

5.2. It is relevant to refer some of the witnesses and material evidence relied upon by the prosecution hereunder.

PWs 1 & 2
:
approvers who graphically explained the participation of Rajan Chettiar and each one of the accused as well as their role in the commission of offences in question;

PW3
:
mahazar witness for the recovery of 8 bundles(MOs.4 to 11) from Rajan Chettiar under Ex.P1;

PW4
:
mahazar witness for the recovery of 3 bundles of counterfeit US Dollars of 20 denomination (MO14 series) from the first accused at Golden Cafe Lodge, Poonamallee High Road, Chennai, under mahazar Ex.P2;

PW5
:
Cashier of Iyyappa Lodge at Hunters Road, Vepery, Chennai, who deposed that the second accused was staying at Room No.13, Iyyappa Lodge, on 3.8.1982 when PW19 arrested the second accused at 6 pm on 3.8.1982 and identified his signature in the mahazar Ex.P31 for the recovery of 6 bundles of counterfeit US Dollars of 20 denomination from Room No.13, Iyyappa Lodge, Hunters Road, Vepery, Chennai;

PW6
:
husband of Anjana Devi, owner of RJVA Press at No.27, Balakrishna Street, Vyasarpadi, Chennai 39;

PW7
:
owner of Iyyappa Lodge, who deposed that the second accused was staying at Room No.13, Iyyappa Lodge, Hunters Road, Chennai, and the visits of the first accused to their lodge to see the second accused;

PW8
:
artist who was engaged by the first accused for preparing a drawing for printing counterfeit currencies and guided the first accused to approach the printing press, viz. Print Aid at Triplicane, Chennai and stated that the first accused took the balance papers as the Print Aid Press did not print the counterfeit US Dollars properly;

PW9

:
Manager of the Print Aid Press at No.9, Thagudeen Khanbahadur, Triplicane, Chennai, owned by his mother, who deposed that the first accused along with PW8 met him with a negative of the counterfeit US Dollar in question for printing samples containing White House on one side and the image of Jackson on the other side, and also with regard to the payment made as per the invoice (Ex.P6);

PW10
:
part time worker in a stationery shop, who deposed that the third accused approached him for cutting papers;

PW11
:
shop owner at Burma Bazaar, who sold 20 denomination US Dollar to the first accused for a sum of Rs.190/-;

PW12
:
mahazar witness who spoke about the recovery of inks (MOs.23 and 24) from Vasantham Press under Ex.P7;

PW14
:
an expert who deposed about the usage of inks (Mos.23 and 24) for printing the counterfeit currencies as per the opinion marked as Exs.P9 and P10;

PW15
:
Court Clerk through whom the prosecution marked Exs.P15 and P16, an affidavit duly certified by Deputy Clerk, US District Court on 9.2.1983 that the 2173 currencies were counterfeit notes;

PW16
:
an expert who deposed about the report (Ex.P17) that counterfeit US Dollars could be printed at the Vasantham Press;

PW17
:
The II Metropolitan Magistrate before whom statements under Section 164 Cr.P.C. (Exs.P20 and P23) were recorded from PW1 and PW2;

PW18
:
The V Additional Sessions Judge who passed a final order under Section 306(1), Cr.P.C. pardoning PWs 1 and 2 by order dated 5.10 .1982 under Exs.P27 and P26

respectively, treating them as approvers; and

PW19
:
Investigating Officer who deposed about the entire investigation.

5.3. All the accused, in their statements under Section 313 Cr.P.C., pleaded innocence stating that they had been falsely implicated and the defence of the first accused was that the counterfeit US Dollars were printed to use them as toy notes.

V - FINDINGS AND DECISION OF THE TRIAL COURT

6.1. Appreciating the material evidence (PWs 1 to 19), documentary evidence (Exs.P1 to P35) and material objects (MOs.1 to 56), the learned III Additional Sessions Judge, Madras, by judgment dated 27.4.199 5 made in S.C.No.25 of 1993, convicted the accused jointly for the offence punishable under Sections 120-B r/w 489-A, 489-C and 489-D, IPC, and sentenced them for seven years rigorous imprisonment, with a fine of Rs.5,000/-, in default, to undergo two years rigorous imprisonment; and independently for the offence punishable under Section 489-C, 489-D, 489-C & D and 489-A, IPC and sentenced them for five years rigorous imprisonment, seven years rigorous imprisonment, five years and seven years rigorous imprisonment, and seven years rigorous imprisonment respectively. The substantive sentences were ordered to run concurrently.

6.2. Hence, the above appeals.

VI - CONTENTIONS MADE ON BEHALF OF THE APPELLANTS

7.1. All the learned counsel for the accused took me in detail through the material and documentary evidence on record.

7.2. Except Mr. Mohan, learned counsel for the second accused, other learned counsel appearing for the first, third and fourth accused submitted that they are prejudiced by the error or omission in framing charges 3, 4, 5 and 6, bringing to my notice that, while

(a) the third charge is related to the alleged participation of the first accused, the same was framed against the second accused;

(b) the fourth charge is related to the alleged role of the second accused, who was arrested at Iyyappa Lodge, Hunters Road, Chennai, the said charge was framed against the third accused;

(c) the fifth charge is related to the alleged participation of the second accused for having found in possession of negatives, blocks and other materials for printing counterfeit notes in his house at No.23 A, Bhavani Nagar, Red Hills, Chennai, the said charge was framed against the third

accused; and

(d) the sixth charge is related to the alleged participation of the third accused and the same was not framed against any particular accused.

7.3. All the learned counsel appearing for the accused/appellants assailed the judgment of conviction and sentence, on the ground of discrepancies and failure on the part of the prosecution to prove the charges beyond all reasonable doubt.

8.1. Mr. Thangamani, learned counsel for the first accused contends that
(a) the presence of the first accused at Golden Cafe Lodge, Poonamallee High Road, Chennai, as deposed by PW4, the Manager of Golden Cafe Lodge, is not supported with any documentary evidence to prove that the first accused was occupying Room No.72 at Golden Cafe Lodge and consequently, the seizure of three bundles of US Dollars of 20 denomination (MO14 series) under Ex.P2 is liable to be disbelieved;
(b) the evidence of PWs 1 and 2 could not be relied upon for want of corroboration by independent witnesses;
(c) the testimony of PWs 1 and 2 against the first accused to the effect that the first accused approached Vasantham Press owned by the third accused through PW2, and thereafter, approached RJVA Press owned by Anjana Devi and then Print Aid Press owned by the mother of PW9, through the artist (PW8), for printing the toy notes, itself would not be sufficient to convict the first accused;
(d) non-examination of Gajendran, Ganesa Iyer, carpenter Shekar, who were said to have prepared materials for the printing of counterfeit US Dollars, viz. printing blocks (MOs.35 to 42) and failure to examine Anjana Devi, the owner of RJVA Press, who is nonetheless the wife of PW6, vitiates the case of the prosecution;
(e) the testimony of PW1 to the effect that the first accused purchased US Dollar of 20 denomination from one Nassar (PW11), who was having a shop at Burma Buzaar, could not be relied upon, as the said US Dollar of 20 denomination was not produced before the trial Court; and
(f) in any event, the explanation offered by the first accused that the counterfeit US Dollars in question were printed only for the purpose of using the same as toy notes and they were not circulated among the general public, was not properly appreciated by the trial Court.

8.2. Mr. Mohan, learned counsel appearing for the second accused, in addition to the contentions raised by the learned counsel for the first accused, contends that

(a) no specific role of the second accused was deposed by PWs 1 and 2 , except that the second accused was accompanying the first accused, during the alleged commission of offence;
(b) in the absence of any evidence as to the active participation by the second accused, it may not be safe to convict the second accused for the offence under Section 120B r/w 489-A, 489-C and 489-D, IPC, and for the offence punishable under Section 489-D, IPC. In this regard, reliance was

placed on the decision in STATE OF TAMIL NADU v. NALINI reported in AIR 1999 SC 2640 (Rajiv Gandhi assassination case - paras 599 and 600);
(c) while PW1 would depose that the second accused came to the timber mart of PW1, when Rajan Chettiar and the first and fourth accused were brought by PW19 to the timber mart of PW1, PW19 would, in contra, depose that the second accused was found at Iyyappa Lodge, Hunters Road, Vepery, Chennai; and the above contradiction renders the very presence of the second accused at Iyyappa Lodge and the seizure of six bundles of US Dollars of 20 denomination from the second accused, under mahazar Ex.P31, at Iyyappa Lodge unbelievable;
(d) in any event, since the six bundles of US Dollars of 20 denomination said to have been seized from the second accused, under mahazar Ex.P31, were not produced before the Court, the seizure of the same from the second accused could not be accepted;
(e) even though the case of the prosecution was that when PW19 was proceeding to Vasantham Press owned by the third accused along with Rajan Chettiar, the first and fourth accused, PW1 and the second accused from Iyyappa Lodge, arrested PW2 on identification by the first accused and on searching PW2, recovered American Dollars of 20 denomination - 85 currencies (MO3 series), under mahazar Ex.P32, in the presence of Thirumal and Jain, the failure to examine the said Thirumal and Jain creates a serious doubt with respect to the recovery of said 85 Nos. of US Dollars of 20 denomination under Ex.P32;
(f) when the prosecution came out with a specific case that printing blocks (Mos.35 to 42) were recovered from RJVA Press, owned by one Anjana Devi under mahazar Ex.P33, no reason was put fourth by the prosecution for not implicating Anjana Devi, owner of RJVA Press as an accused, and hence, the recovery of printing blocks (Mos.35 to 42), which were said to have been used for the commission of the above crime, could not be believed;
(g) similarly, no explanation was offered by the prosecution for not implicating PW8, the artist who designed US Dollar of 20 denomination and PW9, the Manager of Print Aid Press, who printed 4/5 samples of counterfeit US Dollar for prize scheme, in spite of the specific case of the prosecution that both PW8 and PW9 also played considerable role in the commission of offence;
(h) as per illustration (b) to Section 114 of the Indian Evidence Act, the evidence of PWs 1 and 2 are unworthy of credit, as the same do not corroborate with the material evidence. In this regard, reliance is placed on the decisions BHUBONI SAHU v. THE KING reported in AIR (36) 1949 Privy Council 257, and NARAYAN CHETANRAM CHAUDHARY v. STATE OF MAHARASHTRA reported in 2000 AIR SCW 3314;
(i) there was no evidence to the effect that the second accused entered into any agreement with the other accused to commit the offence and assuming that there was any such agreement due to his conduct of accompanying the first accused, as deposed by PWs 1 and 2, absolutely there is no evidence that the second accused had either actively participated or committed any act, besides such alleged agreement; and consequently, the prosecution failed to prove their case for the offence under Section 120-B IPC, for want of link in the chain to prove the alleged offence beyond all reasonable doubt;
(j) the affidavit dated 9.2.1983 sworn by the Special Agent, United States Secret Service, Honolulu Field Office, Honolulu, Hawaii, which was marked as Ex.P16, could not be looked into, as the same was not marked by the person who had sworn the affidavit, inasmuch as the Court Clerk who marked Ex.P16 is not competent to mark the same, as the said Ex.P16 could not be treated as Court

property. In this regard, reliance is placed on the decision in PALANIAPPA v. BOMBAY LIFE ASSURANCE CO. reported in AIR (35) 1948 Madras 298;
(k) in any event, the true copy of the expert opinion (Ex.P17) with respect to the possibility of printing US Dollars of 20 denomination at Vasantham Press owned by the third accused could not be relied upon, as PW16, who is said to have issued the said opinion, has clearly stated in the cross examination that the said document Ex.P17 does not contain his signature; and therefore, the prosecution failed to prove the very printing of counterfeit notes at Vasantham Press; and
(l) the entire evidence of the investigating officer (PW19) is liable to rejected as PW19 being the complainant in the above crime, ought not to have investigated the same. Reliance, in this regard, is placed on the decision in MEGHA SINGH v. STATE OF HARYANA reported in AIR 1995 SC 2339 and BHAGWAN SINGH v. STATE OF RAJASTHAN reported in AIR 1976 SC 985.

8.3. The contentions of Mr. Munirathna Naidu, learned counsel appearing for the third accused in brief are

(a) inviting my attention to the testimony of PW8, the artist who was said to have been engaged for preparing a drawing for printing counterfeit currency and PW9, the Manager of Print Aid Press, as well as the seizure of printing blocks and inks (Mos.35 to 42) under Mahazar Ex.P33, at the premises of RJVA Press owned by Anjana Devi, it is contended that the case of the prosecution that counterfeit US Dollars of 20 denomination were printed at Vasantham Press owned by the third accused is liable to be rejected, as no other materials used for printing counterfeit US Dollars were seized at Vasantham Press, except the printing inks (MOs.23 and 24), which would be available at any printing press;
(b) in the absence of any expert opinion, much less any evidence on record to prove that MOs.23 and 24 recovered from Vasantham Press were used for printing counterfeit notes, the mere seizure of MOs.23 and 24 itself would not be sufficient to hold the third accused guilty of the charges;
(c) Ex.P17, the report with respect to the inspection made at Vasantham Press, by PW16, Santhanakrishna Reddy, could not be relied upon, as PW16 did not dispute in the cross examination that Ex.P17 did not contain his signature; and
(d) in the absence of any such substantial evidence, the mere knowledge of printing counterfeit US Dollars would not be sufficient to constitute an offence under Section 489-A, 489-C and 489-D, IPC, except an offence punishable under Section 489-E, IPC, for which the third accused could be punished only with fine; nor there is any evidence to prove that the first, second, and fourth accused and PWs 1 and 2 had conspired with the third accused at any point of time, for the commission of the above offence and therefore, the mere knowledge of the third accused about the counterfeit notes, as spoken to by the prosecution witnesses, would not, by themselves, be sufficient to attract the offence for which the third accused was charged.

8.4. The contentions of Mr. Thennan, learned counsel appearing for the fourth accused are stated as under.

(a) Since PW4, the Manager of the Golden Cafe Lodge wrongly identified the first accused as fourth accused in the Court during the trial, the very occupation of Room No.72 at Golden Cafe Lodge, by the fourth accused, from where three bundles of counterfeit US Dollars of 20 denomination (MO14) were recovered is doubtful; and consequently, the recovery of MO14 series under mahazar Ex.P2 would not have any bearing to hold that the fourth accused is guilty of the charges. In this regard, reliance is placed on the decision in GHULAM NABI WAR v. STATE OF NCT OF DELHI reported in 2000 SCC (Cri) 1135;
(b) there is absolutely no evidence to prove that the fourth accused was engaged in distributing and converting counterfeit notes, except the confession of Rajan Chettiar and that of PWs 1 and 2 that the fourth accused accompanied the first accused, and therefore, in the absence of any material evidence to prove that the fourth accused had participated in the commission of such offence, to corroborate with the evidence of PWs 1 and 2, the participation of the fourth accused in the conspiracy, as spoken to by PWs 1 and 2, could not be relied upon;

(c) the materials recovered at Room No.72, Golden Cafe Lodge, under Ex.P2, viz. Sl.No.16 - telegram sent by the fourth accused to the first accused from Vascodagama bearing No.327, Sl.No.20 - letter written by the fourth accused to the first accused, Sl.No.21 - Cash Receipt No.5863 dated 30.7.1982 issued by Golden Cafe for the fourth accused towards payment of room rent and Sl.No.22 - Cash Receipt No.814 dated 24.7.1982 issued by Golden Cafe to the fourth accused, could not be relied upon, unless the credibility of the same are proved through the opinion of hand writing and forensic experts that they were written by the fourth accused; and
(d) the very fact that Ex.P2, viz. the mahazar under which three bundles of counterfeit US Dollars of 20 denomination were recovered from Room No.72, Golden Cafe Lodge, was not served on the fourth accused, by itself, would substantially render the presence of the fourth accused at the time of seizure at Golden Cafe Lodge, Poonamallee High Road, Chennai, doubtful.

VII - CONTENTIONS MADE ON BEHALF OF THE PROSECUTION

9.1. Per contra, Mr. Jayaprakash Narayanan, learned Government Advocate appearing for the respondent, contends that even though there are certain irregularities or omissions in the charges, that itself would not vitiate the conviction, as no prejudice was caused to the accused, as they were properly questioned under Section 313, Cr.P.C. with respect to the charges framed against them.

9.2. Antagonizing the contentions of the learned counsel for the first accused, learned Government Advocate contends that
(a) the first accused, along with the fourth accused, met PW1 and received money for printing counterfeit US Dollars and therefore, the evidence of PW1, in the light of his confessional statement (Ex.P20), has to be treated worthy;
(b) the first accused, along with PW2, met the third accused for preparing currency and therefore, the evidence of PW2, in the light of his confessional statement (Ex.P23) could not be disbelieved;
(c) the first accused handed over counterfeit US Dollars to Rajan Chettiar and the second accused; and thereafter, the first accused was withholding the

remaining counterfeit notes with him, as evident from the FIR (Ex.P28);
(d) the information given by Rajan Chettiar, when the search was conducted in his residence at Villivakkam, against the first accused could not be disregarded;
(e) the recovery of three bundles of counterfeit US Dollars (MO14) in the presence of PW4 under Ex.P2 from the first accused at Room No.7 2, Golden Cafe Lodge, Poonamallee High Road, Chennai, occupied in the name of the fourth accused, could not be ignored;
(f) the evidence of PW6, the husband of Anjana Devi, who deposed that the first accused, accompanied with the fourth accused, handed over some blocks in the RJVA Press for printing counterfeit US Dollars; the evidence of PW8, artist, who was engaged by the first accused to draw US Dollar of 20 denomination for printing counterfeit US Dollar; and the evidence of PW11 - Nassar, from who m the first accused bought US Dollar of 20 denomination, would substantially prove the active participation of the first and fourth accused in the commission of offence; and
(g) the evidence of the investigating officer (PW19), who arrested the first accused at Room No.72, Golden Cafe Lodge and recovered some incriminating articles under mahazar Ex.P2, and recorded the confession of the first accused (Ex.P29), has to be valued in its entirety.

9.3. Opposing the contentions of the learned counsel for the second accused, learned Government Advocate contends that the conviction of second accused could not be assailed, for the following reasons:

(a) the statement of accomplice (Exs.P20 and P23) recorded under Section 164, Cr.P.C. by the II Metropolitan Magistrate corroborates with the recovery of 85 Nos. of counterfeit US Dollars of 20 denomination at Room No.13, Iyyappa Lodge, Hunters Road, Vepery, Chennai, under Ex.P31;
(b) the testimony of PW5, the cashier of Iyyappa Lodge, with respect to the recovery of six bundles of counterfeit US Dollars of 20 denomination from Room No.13, Iyyappa Lodge, Vepery, Chennai, occupied by the second accused, corroborates with the evidence of PW7, owner of the Iyyappa Lodge, who deposed that the second accused was staying in his lodge;
(c) the non production of the 85 Nos. of counterfeit US Dollars of 2 0 denomination recovered from P.W.2 before the Court as material objects is not fatal to the case of the prosecution, in view of Ex.P11, the letter written by the Inspector of Police, to the learned Additional Chief Metropolitan Magistrate, wherein, he has forwarded a bundle containing 85 Nos. of counterfeit US Dollars of 20 denomination bearing No.L60929871-B (Sl.No.9 in the list of articles seized) to the Director of Forensic Laboratory for expert's opinion, as spoken to by the Court Clerk (PW15) and the investigating officer (PW19);
(d) the recovery of MOs.43 to 54, viz. printing blocks and negatives, at the residence of the second accused at Red Hills, Chennai on 17.8 .1982 under Ex.P34, corroborates with the evidence of PWs 1 and 2 and that of the investigating officer, PW19; and
(e) the contention that PW19 should not have investigated the offence as

he himself was the complainant in the above crime, is not tenable in law as the complaint lodged and registered by PW19 is not with reference to any

offence said to have been committed on him personally.

9.4. In respect of the contentions of Mr. Munirathna Naidu, learned counsel for the third accused, the learned Government Advocate contends that
(a) the testimony of PW1 and PW2, based on their statements made under Section 164, Cr.P.C. (Exs.P21 and P23), and the orders of PW18 dated 5.10.1983 (Exs.P27 and P26) passed under Section 306, Cr.P.C. pardoning PW1 and PW2, corroborate with the material evidence, viz. seizure of printing blocks and inks etc. (MOs.23 and 24) as well as the evidence of PW8, PW11 and PW19;
(b) the testimony of PW10, Ganesan, that the third accused came to his shop for cutting papers to print counterfeit notes, further proves the case of the prosecution as to the active role played by the third accused;
(c) as per the evidence of PW12, third accused was engaged by PW2 for printing counterfeit US Dollars, for which some amount was paid to the third accused by the first accused; and
(d) the expert opinion, as spoken to by PW16, Assistant Manager, Government Press, about the capacity of the press owned by the third accused, as certified under Ex.P17, bring home the guilt of the third accused beyond all reasonable doubt, as the same corroborates with the evidence of PW19.

9.5. Retaliating the contentions of Mr.Thennan, learned counsel for the fourth accused, the learned Government Advocate contends that:

(a) the evidence of PW1 and PW2, based on their statements Exs.P20 and P23 and the pardoning orders (Exs.P27 and P26) passed under Section 306, Cr.P.C. by PW18, corroborate with the evidence of PW4 and the recovery of MO14 at Room No.72, Golden Cafe Lodge, under Ex.P2;
(b) the articles that were seized under Ex.P2, viz. Sl.No.16 - telegram sent by the fourth accused to the first accused from Vascodagama bearing No.327, Sl.No.20 - letter written by the fourth accused to the first accused, Sl.No.21 - Cash Receipt No.5863 dated 30.7.1982 issued by Golden Cafe for the fourth accused towards payment of room rent and Sl.No.22 - Cash Receipt No.814 dated 24.7.1982 issued by Golden Cafe to the fourth accused, further substantiates the case of the prosecution holding the fourth accused guilty of the offence;
(c) the failure to furnish a copy of Ex.P2 to the fourth accused would not, by itself, annul the case of the prosecution, as the presence of the fourth accused at the time of seizure of MO14 under Ex.P2, in the presence of PW4, is substantially proved in view of the materials seized along with MO14, viz. Sl.No.16 - telegram sent by the fourth accused to the first accused from Vascodagama bearing No.327, Sl.No.20 - letter written by the fourth accused to the first accused, Sl. No.21 - Cash Receipt No.5863 dated 30.7.1982 issued by Golden Cafe for the fourth accused towards payment of room rent and Sl.No.22 - Cash Receipt No.814 dated 24.7.1982 issued by Golden Cafe to the fourth accused, as found in Ex.P2.

9.6. Learned Government Advocate contends that:

(a) non-examination of the Special Agent, United States Secret Service, Honolulu, for marking Ex.P16, by itself would not be fatal to the case of the

prosecution, as the same is admissible in law, placing reliance on the decision in BALAK RAM Vs. STATE OF RAJASTHAN reported in 1994 Crl.L.J. 2451;
(b) the evidence of investigating officer, PW19, is admissible in law, as the complaint lodged and registered by him did not relate to any offence committed against him, as per the ratio laid down in NAVANEETHAKRISHNAN v. STATE reported in 2002 MLJ (Crl.) 46;
(c) the evidence of PW2 could be used to corroborate the evidence of PW1, in strict compliance of illustration (b) to Section 114 of the Indian Evidence Act, as held in HUSSAIN UMAR v. DALIPSINGHJI reported in AIR 1970 SC 45; and
(d) since the evidence of PW1 and PW2 corroborate with the testimony of investigating officer, PW19, the same is permissible in law, as per the decision in ANIL alias ANDYA SADASHIV NANDOSKAR v. STATE OF MAHARASHTRA reported in 1996 MLJR (Crl.) 457.

VIII - SUBSTANTIAL POINTS ARISE FOR CONSIDERATION IN THESE APPEALS

10. The points that arise for my consideration in these appeals are:
(i) Whether the irregularities or omission in framing the charges against the respective accused vitiates the conviction? and
(ii) Whether the conviction and sentence imposed on the accused, by judgment dated 27.4.1995 made in S.C.No.25 of 1993 on the file of learned III Additional Sessions Judge, Madras, is justified in law?

XI - DECISION ARRIVED AT

11.1. Point No.1: Whether the irregularities or omission in framing the charges against the respective accused vitiates the conviction?

11.2. Even according to the evidence of PW1 and PW2, approvers, as well as PW19, investigating officer, it was the first accused who approached RJVA Press for printing counterfeit US Dollars of 20 denomination, with printing blocks and inks and dealt with the printing of counterfeit notes, from whom printing blocks and other materials (MOs.35 to 42) were seized under Ex.P33. The charge (charge No.3) was framed against the second accused instead of the first accused. Hence, concededly, there is an error and irregularity in framing the charge against the second accused and an omission in not framing the charge against the first accused.

11.3. Similarly, as per the evidence of PW1, PW2, PW5, PW7 and PW19, the second accused was staying at Room No.13, Iyyappa Lodge, No.26, Hunters Road, Vepery, Chennai, from where six bundles of counterfeit US Dollars of 20 denomination were seized u mahazar Ex.P31. But, a charge (charge No.4) was framed against the third accused, instead of the second accused, as though the third accused was arrested at Room No.13, Iyyappa Lodge, No.26, Hunters Road, Veperym Chennai. Therefore, there is an error and irregularity in framing the charge against the third accused and an omission in not framing the charge against the second accused.

11.4. As per the case of the prosecution, PW19, the investigating officer, conducted a search at about 4 pm on 17.8.1982 in the house of the

second accused at No.23-A, Bhavani Nagar, Red Hills, Chennai, and recovered certain printing blocks (MOs.43 to 54) under mahazar Ex.P3 4, in the presence of Reddy and K.K. Arumugam, but not at the house of the third accused. While so, the charge (charge No.5) was framed against the third accused, as though the said MOs.43 to 54 were seized from the house of the third accused for printing counterfeit notes. Hence, there is an error and irregularity in framing the charge against the third accused and an omission in not framing the charge against the second accused.

11.5. The sixth charge is with reference to the conspiracy entered into by the first accused with the third accused, the owner of Vasantham Press at No.96, Portuguese Church Street, Chennai, for printing counterfeit US Dollars of 20 denomination through PW2. But, the said charge was not framed against any particular accused. Hence, there is an error, irregularity and omission in framing the charges.

11.6. Pointing out the above errors, irregularities and omissions, the learned counsel appearing for the first, third and fourth accused, seriously contend that the first, third and fourth accused are prejudiced by the said errors, irregularities and omissions in framing the charges and also made an endorsement to that effect in their grounds of appeal. However, the learned counsel appearing for the second accused contends that the second accused is not prejudiced by such errors, irregularities and omissions in framing the charges.

11.7. The errors, irregularities and omissions pointed out with regard to charge Nos.3, 4, 5 and 6, are not disputed by the learned Government Advocate.

11.8. It is true that the sixth charge is not framed against any particular accused. However, all the accused were addressed in the preamble of the charges. Therefore, in my considered opinion, the sixth charge has to be read against all the accused.

11.9. The prosecution case is that the accused/ appellants along with Rajan Chettiar and PW1 and PW2, who were treated as approvers, entered into a conspiracy to counterfeit US Dollars of 20 denomination and played different roles attracting Sections 489-A, 489-C, 489-D read with 120-B, IPC.

11.10. The accused are charged for the offence related to trafficking in counterfeit currency, viz. US Dollars of 20 denomination, said to have been done in pursuance of a conspiracy among them. Therefore, each one of the accused are responsible for the acts of the other conspirators as well. The different roles played by several conspirators need not be considered either separately or in isolation.

11.11. The accused were prosecuted for printing counterfeit US Dollars of 20 denomination and each of them were questioned with reference to charge Nos.3, 4, 5 and 6 referred to above, under Section 313, Cr.P.C. Concededly, there are certain errors, irregularities and omissions in framing the charges. As per Section 464, Cr.P.C., no finding, sentence or order by a

Court of competent jurisdiction shall be deemed invalid either on the ground that no charge was framed or on the ground of any error, irregularity or omission in the charge including any misjoinder of parties, unless the failure of justice had occasioned thereby. Since each of the accused were admittedly questioned with reference to charge Nos.3, 4, 5 and 6, despite an admitted error, omission or irregularity in framing the said charges, the contention that the first, third and fourth accused were prejudiced by the same is not tenable in law.

11.12. A reference to the law settled by the Apex Court in this regard, is relevant.

(a) In KAMMARI BRAHMAIAH v. PUBLIC PROSECUTOR, HIGH COURT OF A.P. reported in AIR 1999 SC 775, the Apex Court has held as under.
" Section 464 is in mandatory terms and specifically provides what is to be done in cases where a charge is not framed or there is an error, omission or irregularity in framing of the charge. From the unequivocal terms of the section, it can be stated that a finding, sentence or order could be set aside only in those cases where the facts are such that no valid charge could be preferred against the accused in respect of the facts proved. Secondly, if the facts are such that a charge could be framed and yet it is not framed but no failure of justice has in fact been occasioned thereby, the finding, sentence or order of the court of competent jurisdiction is not to be set aside on that ground. Thirdly, if there is failure of justice occasioned by not framing of the charge or in case of an error, omission or irregularity in the charge, retrial of the case is to be directed under sub-section (2). Non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. The trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The Code of Criminal Procedure is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities."

(b) In SHAMNSAHED M. MULTTANI v. STATE OF KARNATAKA reported in (200 1) 2 SCC 577, the Apex Court has held as follows.
" Under Section 464(1) Cr.P.C., a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice. The crux of the matter is this: Would there by occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304-B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? (Para 21)
The expression "failure of justice" is perhaps too pliable or facile an expression which could be fitted in any situation of a case. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. (Para 23)
One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But courts often hesitate to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect.

However, if the aspect is of such a nature that nonexplanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was a failure of justice on account on non-compliance with the principle of natural justice."

(c) In LALLAN RAI v. STATE OF BIHAR reported in (2003) 1 SCC 268, following KAMMARI BRAHMAIAH case, the Apex Court held as under.
" On interpretation of Section 464 Cr.P.C., it was observed in Kammari case, (1999) 2 SCC 522 that non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. Procedural law is the handmaid of justice and the Code of Criminal Procedure is no exception thereto. Its incorporation in the statutebook has been to subserve the ends of justice and non-observance of the technicalities does not and cannot frustrate the concept of justice since technicality alone would not outweigh the course of justice. In the event, however, there being prejudice leading to a failure of justice, it cannot but be treated to be an illegality, which is otherwise incurable in nature."

11.13. In view of the above well settled principles laid down by the Apex Court, I am obliged to hold that the first, third and fourth accused are not prejudiced by such errors, irregularities and omissions in framing charge Nos.3, 4, 5 and 6, as contended by the learned counsel for the first, third and fourth appellants. Consequently, conviction of the trial Court is not vitiated.

11.14. Point No.1 is answered in negative.

12.1. Point No.2: Whether the conviction and sentence imposed on the accused, by judgment dated 27.4.1995 made in S.C. No.25 of 1993 on the file of learned III Additional Sessions Judge, Madras, is justified in law?

12.2. The case of the prosecution rests on seven types of evidence, viz.
(i) the evidence of the approvers (PWs 1 and 2);
(ii) the evidence of mahazar witnesses who deposed about the recovery of material objects, viz.
(a) PW3, who spoke about the recovery of 8 bundles (MOs.4 to 11) of US Dollars of 20 denomination from Rajan Chettiar under Ex.P1;
(b) PW4, who spoke about the recovery of 3 bundles of counterfeit US Dollars of 20 denomination (MO14 series) from A1 at Golden Cafe Lodge, Poonamallee High Road, Chennai, under Mahazar Ex. P2;
(c) PW5, who deposed about the stay of A2 at Iyyappa Lodge and the visit of A1 to see A2;
(d) PW6, the husband of Anaja Devi, owner of RJVA Press at No.2 7, Balakrishna Street, Vyasarpadi, Chennai-39;
(e) PW12, who spoke about the recovery of inks (MOs.23 and 24) from Vasantham Press under Ex.P7;

(iii) the evidence of corroborative witnesses, viz.

(a) PW7, Owner of Iyyappa Lodge, who deposed about the stay of second accused at Room No.13, Iyyappa Lodge, and the visits of A1 to their lodge to see A2;
(b) PW8, an artist, who was engaged by first accused for preparing a drawing for printing counterfeit currency and guided A1 to approach the Printing Press, viz., Print Aid Press at Triplicane, Chennai and stated that A1 took the balance papers, as the Print Aid Press did not print the Counterfeit US Dollars properly;
(c) PW11, from whom A1 purchased original US Dollar from Burma Bazaar;
(d) PW9, who deposed that A1 and PW8 approached him for printing samples;
(e) PW10, who spoke about the preparation, viz., purchase of papers for printing the counterfeit notes;

(iv) the evidence of the experts, viz.
(a) PW14, who deposed about the usage of inks (MOs.23 and 24) for printing the counterfeit currencies as per Exs.P9 and P10;
(b) PW16, who deposed about the report (Ex.P17) that counterfeit US Dollars could be printed at the Vasantham Press;
(v) The evidence of court witness, viz. PW15, who spoke about the affidavit duly certified by Deputy Clerk, US District Court on 9.2.1983 that the 2173 currencies were counterfeit notes;
(vi) Material Objects, viz., US Dollar (MOs.4 to 11 and MO14 series) seized and printing blocks and other MOs.; and
(vii)the evidence of the Investigating Officer, PW19.

13.1. Before scrutinising the above evidence on record, a reference to the quality or standard of evidence required to substantiate the above charges would be relevant.

13.2. The first accused was charged for the offence punishable under Section 120-B r/w 489-A, 489-C and 489-D IPC and the offence punishable under Section 489-C, IPC. The second accused was charged for the offences punishable under Section 120-B r/w 489-A, 489-C and 489-D, IPC and for the offence punishable under Section 489-D, IPC. The third accused was charged for the offences punishable under Section 120B r/w 489-A, 489-C and 489-D, IPC and for the offence punishable under Section 489-C and 489-D, IPC. The fourth accused was charged for the offences punishable under Sections 120-B r/w 489-A, 489-C and 489D, IPC and for the offences under Section 489-A, IPC.

13.3. The offences punishable under Sections 489-A, 489-C and 489D, IPC are attracted not only with reference to the counterfeit of Indian currency and bank notes, but also that of the foreign currency.

13.4. Section 489-A, IPC deals with the counterfeit of currency and bank notes. To substantiate the offence under Section 489-A, IPC, the

prosecution must prove that the note in question is a currency note and that the accused counterfeited it or knowingly performed any part of the process of counterfeiting it.

13.5. Section 489-C, IPC, deals with the possession of forged or counterfeit currency. To substantiate the above charge, apart from proving the possession of currency with the accused, the prosecution is also expected to prove that the accused, at the time of his possession, knew or that he had reason to believe that the currency was counterfeited and that he intended to use it as a genuine note and to foist the same on the public. It is settled law that such an intention of the accused, of course, could be proved by collateral circumstances that the possession of notes for any other purpose is inexplicable, vide Re, SATHYANARAYA reported in 1961 (1) Crl.L.J. 617.

13.6. Section 489-D IPC deals with making or possessing instruments or materials for forging or counterfeiting currency or bank notes. To substantiate the offence under Section 489-D IPC, the prosecution must prove that the machinery or instrument or material in question were used for counterfeiting currency. It is sufficient that the accused made or performed some part of the process making machinery or instrument or material in question that are necessary for or in using counterfeit or the same was intended to be used for such part of the process. It may not be necessary to prove that the accused was able to command all the articles required, but, it is sufficient that he was in possession of only some of the machinery or instrument or material that may be necessary for or use in counterfeiting the currency.

13.7. It is trite law that the knowledge referred to in Sections 489 -A, 489-C and 489-D, IPC could be proved by circumstances which would irresistibly lead to the conclusion that the accused had the intention to introduce surreptitiously the note in question on the public and therefore, the necessary knowledge contemplated under Section 489A, 489-C and 489-D IPC, may be presumed from the circumstances that could be established by the prosecution. However, it is for the prosecution to prove such circumstances which attribute knowledge of the accused required to prove the offence under Sections 489-A, 489-C and 4 89-D IPC.

13.8. The case on hand is one of trafficking counterfeit currencies in pursuance of a conspiracy said to have been entered among accused 1 to 4, along with approvers PWs.1and 2 and one Rajan Chettiar. Therefore, where the accused were charged jointly for the offence punishable under Section 120-B r/w Sections 489-A, 489-C and 489-D IPC and independently for the offence under Sections 489-A, 489-C and 489-D IPC, the different and independent role played by several conspirators pursuant to the conspiracy, is wholly irrelevant, because each one of the accused is responsible for the act of the other conspirators as well. In such case, the defence taken by the learned counsel for the appellants that the role of the respective accused are separate and has to be considered in isolation, or that some of them, viz., the second accused and the fourth accused just accompanied the other accused without any active role, is not sustainable in law.

13.9. Of course, suspicion or doubt is not sufficient for fastening the liability on the accused. However, the overall and collective knowledge that prevails among the accused in dealing with the counterfeit US Dollars and the possession of the material objects, viz., counterfeit currencies as well as instruments or materials purported to be used for counterfeiting, would bring home the guilt against the accused from the point of reasonableness, particularly when such circumstances are inexplicable.

13.10. The seven types of evidence relied upon by the prosecution referred to above, in the instant case, are to be scrutinised keeping the above degree or standard of proof required in law.

14.1. PW1 and PW2 are approvers. In order to appreciate the evidence of PW1 and PW2, a reference to illustration (b) to Section 114 and Section 133 of the Indian Evidence Act, (hereinafter referred to as the 'Act') would be relevant.
"Section 114:
Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
Illustrations.- The Court may presume
(a) ..
(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;
...

Section 133:
Accomplice.- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

14.2. As per illustration (b) to Section 114 of the Act, the testimony of an accomplice is unworthy of credit unless the same is corroborated with material particulars. Section 133 of the Act declares that

an accomplice shall be a competent witness against an accused person and conviction of the accused is not illegal merely because it proceeds on the uncorroborated testimony of the accomplice.

14.3. A harmonious reading of both illustration (b) to Section 114 and Section 133 of the Act enunciates that though it is not illegal to convict upon the evidence of an accomplice supported by the confession of the co-accused, independent evidence implicating the accused is required as a rule of prudence. In short, it is a matter of rule of prudence to arrive at a conclusion based on the testimony of the accomplice. In other words, to convict an accused based on the testimony of the accomplice, the conviction should satisfy the double test for appreciation of the evidence of approvers, viz. reliability of the approver and corroboration based on sufficient material evidence.

14.4. None of the accused challenged the testimony of PW1 and PW2 in their respective cross examinations as to the reliability or motive behind the testimony of the approvers. In the absence of any question, doubt or suggestion as to the motive of the approvers for implicating the accused in the above charges, I do not see any doubt as to the reliability of the evidence of approvers, PW1 and PW2.

14.5. The remaining test to be satisfied to prove the credibility of the evidence of the approvers is as to the corroboration based on sufficient material evidence.

14.6. In BHUBONI SAHU v. THE KING reported in AIR (36) 1949 Privy Council 257, a Constitutional Bench held that whilst it is not illegal to act upon the uncorroborated evidence of an accomplice it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further the evidence of one accomplice could not be used to corroborate the evidence of another accomplice. Courts should be slow to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused. The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting upon independent evidence which in some measure implicates each accused. As a statement under S.164 can never be used as substantive evidence of the facts stated, but it can be used to support or challenge evidence given in Court by the person who made the statement. The statement by the approver under S.164 plainly does not amount to the corroboration in material particulars which the Courts require in relation to the evidence of an accomplice. An accomplice cannot corroborate himself; tainted evidence does not lose its taint by repetition. But in considering whether the evidence of the approver given before the Committing Magistrate was to be preferred to that which he gave in the Sessions Court, the Court is entitled to have regard to the fact that very soon after the occurrence he had made a statement in the same sense as the evidence which he gave before the Committing Magistrate.

14.7. But, the Apex Court in HUSSAIN UMAR v. DALIPSINGHJI reported in AIR 1970 SC 45, of course, distinguishing BHUBONI SAHU case, held that if several accomplice simultaneously act without previous concert giving consistent account of the crime implicating the accused, the Court may accept the several statements as corroborating each other, provided they were given independently.

14.8. In NARAYAN CHETANRAM CHAUDHARY v. STATE OF MAHARASHTRA reported in 2000 AIR SCW 3314, the Apex Court held as under.
" Though the conviction of an accused on the testimony of an accomplice

cannot be said to be illegal, yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. For corroborative evidence the Court must look at the broad spectrum of the Approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration may depend upon the facts of different cases. Corroboration need not be in the form of ocular testimony of witnesses and may be even in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable.
Where the statement of accomplice was vivid in explanation and inspired full confidence of the Court to pass the conviction of the accused for the offences with which they were charged and the corroborative evidence to the aforesaid statement left no doubt in the mind of the Court regarding the involvement of the appellants in the commission of the crime for which they had been convicted and sentenced. Such conviction on basis of testimony of accomplice would not be liable to be set aside."
(emphasis supplied)

14.9. Since the testimonies of approvers, PW1 and PW2 are independent and without any previous concert, in my considered opinion, they satisfy the test of corroboration with one another. That apart, the evidence of the investigating officer, PW19, also corroborates with the evidence of PW1 and PW2.

15.1. It was argued on behalf of the accused that the entire case of the prosecution is liable to be rejected as the same rests either on the evidence of accomplice or that of the testimony of the investigating officer, PW19, as he himself is a complainant, placing reliance on the decision in BHAGWAN SINGH v. STATE OF RAJASTHAN reported in AIR 1976 SC 985 and MEGHA SINGH v. STATE OF HARYANA reported in AIR 19 95 SC 2339. However, both the decisions are distinguishable from the facts and circumstances of the present case.

15.2. In BHAGWAN SINGH v. STATE OF RAJASTHAN reported in AIR 1976 SC 985, the Apex Court held that investigation made by a Head Constable was held to be a infirmity as he himself was the person to whom the bribe was alleged to have been offered.

15.3. In MEGHA SINGH v. STATE OF HARYANA reported in AIR 1995 SC 233 9, which arise under the provisions of Terrorist and Distruptive Activities (Prevention) Act, it is held that the evidence of the investigating officer, who himself registered the complaint against the accused on the basis of recovery of a pistol and catridge from the accused for having the same without license, should not have been relied upon as the same did not corroborate with any independent witness.

15.4. In the instant case, even though the investigating officer himself registered the complaint, he was not a party to the crime as in the case of BHAGWAN SINGH v. STATE OF RAJASTHAN reported in AIR 1976 SC 985 and unlike in the case of MEGHA SINGH v. STATE OF HARYANA reported in AIR 1995 SC 2339, the testimony of the investigating officer (P.W.19) corroborated with

the evidence of the approvers, viz., P.W.1 and P.W.2, as well as with that of the independent witness to substantiate the charge against the accused.

15.5. Based on the secret information, the investigating officer (PW19) conducted a raid at the house of Rajan Chettiar at No.6, Palaiamman Koil Street, Villivakkam, Chennai, between 1.30 pm to 3.00 pm on 3 .8.1982 and recovered 8 bundles of US Dollars of 20 denomination (MOs.4 to 11), under Mahazar Ex.P1 in the presence of one Thiruvengadam (PW3). Immediately he registered a complaint suo motu in Crime No.32 of 1982 under Section 157, Cr.P.C. and proceeded with the investigation. Such a practice will not automatically nullify the proceedings unless the investigation is established to be unfair and partial, vide SUNDARARAJAN v. STATE reported in 1999 MLJ (Crl.) 113 and NAVANEETHAKRISHNAN v. STATE reported in 2002 MLJ (Crl.) 46.

15.6. There is no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not, by itself, give rise to any doubt about their credit worthiness, vide ANIL alias ANDYA SADASHIV NANDOSKAR v. STATE OF MAHARASHTRA reported in 1996 MLJ (Crl.) 457.

15.7. I, therefore, do not find any infirmity to place reliance on the evidence of the investigating officer (PW19), to corroborate the testimony of accomplice, and to hold the evidence of the investigating officer credible.

16.1. Placing reliance on JAGDISH v. STATE OF MADHYA PRADESH reported in 2002 AIR SCW 2765, it is contended that in the absence of examination of panch witness, the recovery of material objects could not be relied upon, particularly, with reference to the following recoveries:
(i) recovery of five bundles of counterfeit US Dollars of 20 denomination (MO1 series) from PW1 under mahazar Ex.P33, at Canara Timber Corporation, for non examination of mahazar witness Thirumal and Jain;
(ii) recovery of 85 counterfeit US Dollars of 20 denomination (MO3 series) under mahazar Ex.P32 from P.W.2, for non-examination of Thirumal and Jain;
(iii)recovery of printing blocks (Mos.35 to 42) from RJVA Press under mahazar Ex.P33, for non-examination of Anjana Devi;
(iv) recovery of MOs.43 to 54 under mahazar Ex.P34 from the house of the second accused at Red Hills at 4 p.m. on 17.8.1982, for non-examination of Reddy and K.K. Arumugam; and
(v) recovery of spectacle pouch and receipts (Mos.55 and 56) from the house of Rajan Chettiar at 6.30 pm on 17.8.1982 under mahazar Ex.P3 5, for non examination of M.A.Kadar and Reddy.

16.2. In JAGDISH v. STATE OF MADHYA PRADESH reported in 2002 AIR SCW 2765, the prosecution recovered narcotic drugs from the accused while they were travelling in a bus, in the presence of PW2 and PW3 who did not support

the case of the prosecution. It is under such context, the evidence of the PW1, investigating officer was disbelieved by the Apex Court, as the prosecution failed to examine any other passenger who travelled in the bus.

16.3. It is not so in the instant case, where the prosecution strongly relied upon the testimony of PW1 and PW2, approvers, which are admissible in law for having made under Section 164, Cr.P.C., with respect to recovery of MO1 series from PW1 under Ex.P30, MO3 series from PW2 under Ex.P32, MOs.35 to 42 from RJVA Press under Ex.P33 which is supported with the evidence of PW6 - the husband of Anjana Devi, and six bundles of counterfeit US Dollars of 20 denomination from the second accused under Ex.P31. Therefore, non-examination of panch witnesses would not, in any way, vitiate the case of the prosecution.

17.1. Even though the investigating officer (PW19) had explained the events commencing from the registration of the complaint till the completion of the investigation carried on by him, including the recovery of counterfeit US Dollars, the arrest of the accused and the recovery of other material objects such as ink bottles, printing blocks, etc. which are used for counterfeiting US Dollars in question, it is the testimony of the approvers viz., PWs.1 and 2 which graphically narrates the entire history of the crime in question as well as the respective roles played by the conspirators/accused in the commission of the offence in question.

17.2. PW1, Ravindran was a business partner of the second accused in running Canara Timber Corporation, No.176, Sydenhams Road, Periamet, Chennai. According to PW1, it was the carpenter by name Sekhar, who initially created interest to earn more money by buying counterfeit notes from one Rahim; but their attempt did not materialise, as the said Rahim did not give any counterfeit notes to them. Then the said Sekhar brought Jayaprakash, Ganesa Iyer and his wife to the shop owned by PW1 and A2 and informed that one Periyasamy (A1) known to Jayaprakash, Ganesa Iyer and his wife was selling counterfeit notes. Thus the first accused was introduced to the second accused and PW1 through Sekhar.

17.3. After PW1, the first accused and the second accused became familiar with each other the first accused suggested to print counterfeit notes which may cost about Rs.10,000/-. The first accused also suggested that it would be difficult to print Indian currency with water mark and therefore, they decided to print counterfeit US Dollars so that they could exchange the same through one Rajan Chettiar of Villivakkam and Anandan from Goa (A4). Accordingly, they proceeded by preparing round blocks, number blocks and photos relating to Dollar by one Gaja alias Gajendran at Choolai, Chennai, and proposed to counterfeit US Dollars in the Vasantham Press at Portugese Church Street, Vyasarpadi, Chennai, owned by Janarthanam (A3), who was introduced through one Rajendra Menon, the other approver examined as PW2.

17.4. At this juncture, it is relevant to observe that the other approver (PW2) deposes only from the point he introduced the third accused, owner of the Vasantham Press and he does not speak about the development of relationship among the first accused, second accused and PW1, and their

acquaintance with Rahim, Sekar, Jayaprakash, Ganesa Iyer and his wife. This aspect of the case of the prosecution confirms that both the approvers PWs.1 and 2 did not have any previous concert.

17.5. Even though the learned counsel for the accused contend that non-implication of Jayaprakash, Ganesa Iyer and his wife vitiates the case of the prosecution, there is no material on record to show the role played by the said Jayaprakash, Ganesa Iyer and his wife in printing counterfeit notes. Therefore, I do not find any merit in the said contention.

17.6. Again, referring to the testimony of PW1, while PW1, the first accused, second accused and the third accused started preparing for counterfeiting US Dollars, the first accused contacted Rajan Chettiar from Golden Cafe, Poonamallee Road, Chennai over phone for the exchange of the counterfeit US Dollars and also informed Rajan Chetttiar that one Anandan (A4) has come from Goa, and therefore, Rajan Chettiar came over to Golden Cafe where the first accused introduced the fourth accused to Rajan Chettiar. With the above preparations of exchanging the counterfeit US Dollars through Rajan Chettiar and the fourth accused, PW1, the first accused, second accused and the third accused further proceeded with the printing of counterfeit US Dollars.

17.7. The above preparations for printing counterfeit US Dollars was also spoken to by the other approver PW2. Hence, reference to the testimony of PW2 in this regard is relevant. According to PW2, the third accused, required one ream of papers for printing counterfeit US Dollars when PW1, the first accused, and the fourth accused approached him with six blocks, namely front side block, back side block, small emblem block, serial number block. Out of Rs.500/- paid as advance by the first accused to the third accused, PW2 took Rs.100/- and gave Rs.400/- to the third accused and thereafter, the first accused brought one ream of papers and gave the same to the third accused and required him to cut the papers to the size of US Dollars of 20 denomination and print the same expeditiously, stating that he would get the original US Dollar of 20 denomination.

17.8. Accordingly, the first accused approached one Nassar, the shop keeper at Burma Bazaar, who sold US Dollar of 20 denomination for a sum of Rs.190/- as deposed by PW1. The said Nassar was exmained as PW11, whose testimony corroborates with this portion of the evidence of PWs.1 and 2, namely regarding the purcha se of original US Dollar from Nassar (PW11) for a sum of Rs.190/-.

17.9. As per the evidence of PW1, the first accused required Rs.230 /- for purchase of US Dollar of 20 denomination and accordingly PW1 gave Rs.230/- to the first accused, out of which, the first accused purchased one original US Dollar of 20 denomination from Nassar (PW11). Even though the learned counsel for the accused highlights this discrepancy as to the amount paid for the purchase of US Dollar of 20 denomination, viz., for Rs.230/- as per the testimony of P.W.1; but it was for Rs.190/- as per the evidence of P.W.11, I do not see any discrepancy in this regard. Reading the testimonies of P.W.1 and P.W.11 together, it is evident that even though P.W.1 had given

Rs.230/- to the first accused for the purchase of US Dollar of 20 denomination, as per the evidence of P.W.11 he received only Rs.190/- from the first accused out of the money given by PW1 for the purchase of original US Dollar of 20 denomination.

17.10. The testimony of P.W.2 further discloses that the third accused started cutting the papers and printing the counterfeit US Dollars of 20 denomination. One Ganesan, who was examined as PW10 deposed that the third accused approached him for cutting the papers for printing purpose. Therefore, the evidence of PW10 to that extent corroborates with the role played by the third accused in the process of printing counterfeit US Dollars.

17.11. PW2 further deposed that, thereafter, the third accused printed some proof in all four papers containing same numbers. After comparing the US Dollar and the proof, the first accused asked the third accused to mix some more ink and then the first accused took away the original US Dollar. Thereafter, the first accused came to the third accused and took one bundle containing twenty five notes of counterfeit US Dollars after paying Rs.570/- towards the printing charges and undertook to pay the balance of Rs.130/- later and also asked the third accused to print counterfeit US Dollars in the remaining half ream of papers also.

17.12. In the meanwhile, PW2 - Rajendra Menon suggested the first accused to print the remaining half ream of papers in some other press, namely RJVA Press at No.27, Balakrishna Mudali Street, Vyasarapadi, Chennai, owned by Anjana Devi and run by her husband (PW6), by referring the name of PW2.

17.13. Even though the first accused handed over the white papers, ink bottles, and printing blocks to RJVA Press, the first accused did not turn back to RJVA Press thereafter. In this connection, it is relevant to refer the recovery of printing inks and blocks (M.Os.35 to 42) under Mahazar Ex.P33 in the presence of the owner of RJVA Press Anjana Devi, whose signature in Ex.P33 was identified by her husband (PW6).

17.14. Even though an argument was advanced by the learned counsel for the accused that the failure to implicate RJVA Press vitiates the case of the prosecution, in my considered opinion, but for the receipt of printing blocks from the first accused, no process was undertaken by RJVA Press. Hence, the contention of the learned counsel for the accused in this regard is rejected.

17.15. That apart, a reference to the testimony of PW8, an artist, would further throw light to the case of the prosecution. PW8, who was engaged for preparing the blocks by the first accused, stated that he was originally asked to prepare the block for Rupees Fifty note, which were required for dance scene in a cinema shooting. But, however his drawing was found not satisfactory by the first accused. Thereafter, the first accused asked PW8 to draw one US Dollar, but since PW8 could not put the letters properly, the first accused was not satisfied with the work of PW8. It is in that context, PW8 suggested the first accused to approach Print Aid Press at Triplicane for printing fake US Dollars for the purpose he was informed. It

is therefore, clear that no active role was played by PW8. Hence, the contention of the learned counsel for the accused that the non-implication of PW8 vitiates the case of the prosecution, is not tenable in law.

17.16. The testimony of PW9, the Manager of Print Aid Press, who was introduced to the first accused by PW8, discloses that PW8 and the first accused approached Print Aid Press for printing fake US Dollars containing White House on the one side and the image of Jackson on the other side, for a prize scheme. PW9 also deposed that even though they undertook the order placed by the first accused and PW8 to print fake US Dollars in seven reams of paper for the purpose of prize scheme, the said order was subsequently cancelled. The contention of the learned counsel for the accused for non implication of PW9, therefore, fails.

17.17. The testimonies of PW8, PW9 and PW11, therefore, establish the intention of the first accused in counterfeiting US Dollars and the active role played by him in the process of printing.

17.18. The further testimony of P.W.1 is that the counterfeit US Dollars printed at Vasantham Press owned by the third accused were proposed to be exchanged through Rajan Chettiar and the fourth accused, at which point of time, the investigating officer (PW19) received a secret information and conducted a raid at the residence of Rajan Chettiar at No.6, Palaiamman Koil Street, Villivakkam, Chennai, and then registered a complaint and proceeded with the investigation, as deposed.

17.19. Now comes the relevancy of the testimony of the investigating officer (PW19).

17.20. The recovery of 8 bundles (MOs.4 to 11) by the Investigating officer (P.W.19) under Mahazar Ex.P1 in the presence of one Thiruvengadam (PW3) further strengthens the case of the prosecution as to the role of Rajan Chettiar and thereby renders the testimony of PW1 in this regard trustworthy. The testimony of one Thiruvengadam (PW3), who spoke about the recovery of MOs.4 to 11, namely, the counterfeit US Dollars of 20 denomination, which was wrapped in MO12 and recovered under Ex.P1, also corroborates with the evidence of PW19.

17.21. PW19, after the arrest of Rajan Chettiar on 3.8.1982, proceeded to Golden Cafe along with Rajan Chettiar and found the first and fourth accused at Room No.72 in the Golden Cafe, where three bundles of US Dollars (MO14 series) were seized at 4.30 pm under Mahazar Ex. P2, in the presence of P.S.Kumar, Manager of Golden Cafe, who was examined as PW4. A confession statement was also obtained to this effect from the first accused which was marked as Ex.P29.

17.22. P.S.Kumar, the Manager of Golden Cafe, who was examined as PW4, even though identified the first accused as the fourth accused, which was highlighted by the learned counsel for the accused as a major discrepancy, the evidence of PW19 resolves the discrepancy to the effect that both the first and fourth accused were found at room No.72, Golden Cafe Lodge. Of course, an

argument was advanced on behalf of the fourth accused that the fact that the Mahazar report was served on the first accused would show that the recovery of MOs.14 series, under Ex.P2 could not be used against the fourth accused and in this regard reliance was placed on the decision in GHULAM NABI WAR v. STATE OF NCT OF DELHI reported in 2000 SCC (Cri) 1135. In GHULAM NABI WAR case, the prosecution recovered explosive substance from the bag of the first accused therein and the same was not used against the second accused therein, who was a tenant in possession of the room in which the bag was found. In the instance case, even though the recovery was made from a lodge, the room was booked in the name of the fourth accused and Mahazar was given in the name of the first accused and therefore, both were found to be in occupation of Room No.72, Golden Cafe. Moreover, as already observed, it is a settled law that in a case of trafficking in counterfeit currency pursuant to a conspiracy, the fact that several conspirators played different roles is wholly irrelevant in considering the charge against them under Sections 120B r/w 489-A, 489-C, 489-D IPC, inasmuch as each one is responsible for the act of the other conspirator as well. Therefore, segregating the role of each conspirator and considering their overt act in isolation is not permissible in law. Hence, it is irrelevant whether Mahazar report Ex.P2 was served only on the first accused but not to the fourth accused.

17.23. From the Golden Cafe, PW19 proceeded to the Canara Timber Corporation at No.176, Sydenhams Road, Periamet, Chennai, owned by Ravindran (PW1), lead by Rajan Chettiar, the first accused and the fourth accused, where 5 bundles of counterfeit US Dollars of 20 denomination (MO1 series) were recovered under Mahazar Ex.P30, in the presence of Thirumal and Jain. It is true the said Mahazar Witnesses Thirumal and Jain were not examined as witnesses by the prosecution. However, the testimony of PW1 from whom the said MO1 series was seized under Ex.P30, supports the case of the prosecution more strongly. The recovery of MO1 series as deposed by PW19, corroborates with the testimony of PW19 both in his evidence as well as in the statement made in the proceedings under Section 164 Cr.P.C. marked as Ex.P20. Therefore, there is no missing link in the chain of the case of the prosecution.

17.24. From the shop of PW1, Canara Timber Corporation, the investigating officer (PW19) went to Iyyappa Lodge at Hunters Road, Vepery, Chennai, where he arrested the second accused who was occupying room No.13, and recovered six bundles of counterfeit US Dollars of 20 denomination under Ex.P31. Of course, strong objection was raised by the learned counsel for the accused for non-production of the six bundles of counterfeit US Dollars of 20 denomination which were seized under Ex.P31. But the explanation offered by the prosecution in this regard based on the evidence of the Assistant (PW15) that he sent those US Dollars under Ex.P12 and P13 for examination of the same by American Embassy, fills up the gap.

17.25. The evidence of one Soodamani (PW5), who was working as Cashier in Iyyappa Lodge, and that of one Krishnan who was the owner of the Iyyappa Lodge (PW7), collectively and corroboratively proves the stay of the second accused at Iyyappa Lodge, the visit of the first accused to the Iyyappa Lodge, and the recovery of six bundles of counterfeit US Dollars of 20

denomination under Ex.P31 from the possession of the second accused. Pointing out the statements of PW1 that the second accused came to Canara Timber Corporation to see PW1, the learned counsel for the second accused invited my attention to the discrepancy as to the presence of the second accused at the time of visit of PW19 along with the first accused, fourth accused and PW1 at Iyyappa Lodge. But, in my considered opinion, such minor discrepancy would not vitiate the case of the prosecution as the possibility of the visit by the second accused to PW1's Canara Timber Corporation, by itself, would not be a ground to disbelieve the stay of the second accused at Iyyappa Lodge, the visit of the first accused, and the recovery of six bundles of counterfeit US Dollars of 20 denomination under Ex. P31, as spoken by PWs.5, 7 and 19.

17.26. Both PWs.1 and 19 then spoke about the arrest of PW2 near Padmanabha Theatre bus stop, Chennai, when they were proceeding to Vasantham Press owned by PW3. The evidence of PW1 also corroborates with that of PW19 as to the recovery of 85 Nos. of counterfeit US Dollars of 20 denomination (MO3 series) under Mahazar Ex.P32 from PW2 in the presence of Thirumal and Jain. No doubt, the learned counsel for the accused makes a serious complaint about the non-examination of the Mahazar witnesses Thirumal and Jain, contending that the seizure of MO3 series from PW2 therefore, is not trustworthy, and as a result, the link in the chain to bring home the guilt against the accused under Section 120-B IPC is missing. But, I am unable to accept the same in view of the clear, unimpeachable and vivid testimony of PW2.

17.27. After the arrest of PW2, the investigating officer (PW19) proceeded to Vasantham Press along with Rajan Chettiar, first accused, fourth accused, PW1, second accused and PW2, and since it was late night, except effecting the arrest of the third accused and sealing the premises of Vasantham Press, no search was made on 3.8.1982, as uniformly stated by PW1 and PW19.

17.28. According to the investigating officer (PW19), a search was conducted on 12.8.1982 at the premises of Vasantham Press owned by the third respondent and recovered three ink bottles of which one ink bottle was big and two ink bottles were small, the big bottle (MO23) and the small bottles (MO24) under Mahazar Ex.P7 in the presence of one Zainudeen who was examined as PW12.

17.29. The Mahazar witness P.W.12 in his evidence deposed that the third accused took two/three papers from a wooden plank and that US Dollar of 20 denomination were printed on both sides in two papers, but printed only on one side in the third paper. He also spoke about the recovery of MOs.23 and 24 under Mahazar Ex.P7.

17.30. That apart, P.Santhanakrishna Reddy, the Assistant Work Manager, Stationery and Printing Department, who was examined as PW16, opined that counterfeit US Dollars of 20 denomination could be printed in Vasantham Press owned by the third accused.

17.31. The Investigating Officer PW19 further deposed that based on

the judicial confession made by PW1 they searched RJVA Press owned by Anjana Devi on 4.8.1982 and seized printing blocks (MOs.35 to 42) under Mahazar Ex.P33 in the presence of Anjana Devi. Even though order was placed by the first accused with the RJVA Press for printing of counterfeit US Dollars of 20 denomination, the same was subsequently cancelled by the first accused, as spoken to by PW1. The recovery of MOs.35 to 42 becomes relevant to establish the efforts taken by PW1, the first accused and the second accused for printing counterfeit US Dollars and the circumstances which proved their intention for committing the crime in question.

17.32. The learned counsel for the accused, of course, contended that (i) no reliance could be placed on the recovery of MOs.35 to 42 due to the non-examination of Anjana Devi; and (ii) if the evidence of PW6, who is nonetheless the husband of Anjana Devi is taken as sufficient corroborative evidence for the recovery of MOs.35 to 42, by identification of the signature of Anjana Devi by PW6, the prosecution ought to have implicated Anjana Devi also as an accused in the above crime. But, I do not find any substance in the above contention, because, firstly, the case of the prosecution as spoken to by PW1 is that orders placed by PW1 and the first accused with RJVA Press to print counterfeit US Dollars was subsequently cancelled by the first accused himself and secondly, when PW6 was examined to identify the signature of Anjana Devi, no suggestion was made denying the identification of the signature of Anjana Devi by PW6 in Ex.P4.

17.33. The Investigating Officer (PW19) during the search conducted at about 4.00 p.m. on 17.8.1982 in the house of the second accused at No.23A, Bhavani Nagar, Red Hills, Chennai, recovered printing blocks etc. (MOs.43 to 54) under Mahazar Ex.P34, in the presence of Reddy and K.K.Arumugam. The non-examination of the said mahazar witnesses, by itself, will not render the seizure of the materials doubtful, as the experts opinion marked as Ex.P10 (which is dealt with later), corroborates with the evidence of Investigating Officer who deposed about the above seizure of MOs.43 to 54.

17.34. A closer scrutinization of Exs.P9 and P10 with reference to the material objects recovered during the investigation, referred to above, discloses that the experts were of the opinion that the materials recovered, namely wooden blocks, metal blocks, emblems, inks and negatives were found to have been used for printing of the counterfeit US Dollars.

17.35. In addition to the experts opinion marked as Exs.P9 and P10, the prosecution also relies upon Ex.P16, namely the affidavit dated 9 .2.1983 sworn to by the Special Agent, United States Secret Service, Honolulu Field Office, Honolulu, Hawaii. The learned counsel for the accused contends that Ex.P16 could not be relied upon for nonexamination of the author of the opinion. In this regard, it is relevant to refer Ex.P16, namely the affidavit dated 9.2.1983 sworn to by the Special Agent, United States Secret Service, Honolulu Field Office, Honolulu, Hawaii:

"AFFIDAVIT
1. R.William Askeland, residing at Honolulu, Hawaii, United States of America, being first duly sworn, upon his oath and says as follows:

2. I am a Special Agent of the United States Secret Service, a Division of the United States Treasury Department. I have been continuously employed by the U.S. Secret Service since November, 1970. I have been engaged during that time in conducting and supervising investigations relating to the counterfeiting, forgery and alteration of obligations and securities of the United States. I have received special training in schools operated by the U.S. Secret Service relating to the manufacture of genuine currency of the United States and in methods employed by counterfeiters to forge, alter and counterfeit United States currency. I am presently assigned as a Special Agent of the Honolulu field Office, Honolulu, Hawaii, where I daily examine and evaluate counterfeit currency and prepare reports on my findings. On the basis of my training and experience, I have been accepted by the U.S. District Courts of the United States as an expert witness qualified to testify in criminal proceedings as to w hether suspect currency is genuine or counterfeit.

3. On the 4th day of February, 1983, 2,173 suspect Federal Reserve Notes were received by the Honolulu field office of the U.S. Secret Service, having been forwarded with a letter dated September 7, 1982, from R.N.Sinha, Assistant Director (Interpol), Central Bureau of Investigation - Interpol Wing, 2nd Floor, Sardar Patel Bhavan, Parliament Street, New Delhi, India. The 2,173 suspect bills are described as follows: $20 FRN's, drawn on the Federal Reserve Bank of San Francisco, Series 1969C, Check Letter G, Quadrant 2, Face plate 181, Back plate 141.

4. I have carefully examined each of the 2,173 notes described above and, on the basis of my training and experience, I have determined that each is counterfeit. Each of the notes is of record with the Department of Treasury under Secret Service circular number 8843.

sd/-
R.William Askeland
Special Agent
Honolulu Field Office, Honolulu, Hawaii

Subscribed and sworn to me this
9th day of February, 1983.

sd/-
Deputy Clerk
U.S. District Court"

17.36. The contention that the non-examination of the said foreign witness could not be accepted in view of the decision of the Division Bench of Rajasthan High Court in BALAK RAM Vs. STATE OF RAJASTHAN reported in 1994 Crl.L.J. 2451, wherein it is held that where the cross-examination of Ballastic expert was not found necessary either by the Court or the accused, the report of the Ballastic Expert is admissible in evidence without calling

him as witness. That apart, a careful reading of Ex.P16 would show that it is not a mere expert opinion but a record certified by the Deputy Clerk, U.S. District Court, the credibility of which is protected under Section 86 of the Indian Evidence Act, wherein it is provided that the Court may presume the genuineness and accuracy of any document purporting to be certified copy of any judicial record of any foreign country, if such copy is duly certified in the manner and according to the rules in use in the country for the certification of the copies of judicial records. It is not the case of the accused that Ex.P16 was not certified by the Deputy Clerk, U.S. District Court, and therefore it is authentic to rely on Ex.P16. Ex.P16 clearly states that each of the Dollars in question, which were forwarded for the opinion of the Expert, is a counterfeit note.

18. From the above closer scrutinization of the seven types of evidence, and in particular, appreciating the evidence of PWs.1 and 2, which corroborates with that of PW19 as well as other corroborative witnesses, mahazar witnesses, experts opinion and material objects, referred to above, as trustworthy, I am satisfied that the prosecution has proved the following facts and circumstances of the case, without missing any link between the chain, to bring home the guilt against the accused, viz.,
(i) the intention of the accused as well as PWs.1 and 2 to earn more money by printing counterfeit US Dollars of 20 denomination;
(ii) the intention and proposal of the first accused and second accused as well as P.W.1 to exchange the counterfeit US Dollars through Rajan Chettiar and the fourth accused;
(iii) the purchase of original US Dollar of 20 denomination by the first accused out of the money given by P.W.1, from one Nassar, PW11, to print counterfeit US Dollars of 20 denomination;
(iv)making of printing blocks by Chinnaiah, an artist, who was examined as PW8;
(v) orders placed by the first accused as spoken to by PW8 for printing counterfeit US Dollars of 20 denomination in Print Aid Press, which was subsequently cancelled;
(vi) again orders placed by PW2, the first and second accused with Vasantham Press owned by the third accused for printing counterfeit US Dollars, and the undertaking of the job by the third accused for cutting the papers in the shop of one Ganesan, who was examined as P.W.10 , and for printing counterfeit US Dollars of 20 denomination;
(vii)the job entrusted with RJVA Press, by the first accused by providing white papers, ink bottles, printing blocks, for printing counterfeit US Dollars of 20 denomination, as spoken to by PW6, the husband of Anjana Devi, owner of the RJVA Press;
(viii)the presence of the fourth accused with the first accused at Golden Cafe lodge, as spoken to by PW4, the Manager of Golden Cafe Lodge to prove the participation of the fourth accused in the crime;
(ix)the stay of the second accused at Iyyappa Lodge and the visit of the first accused to meet the second accused at Iyyappa Lodge, substantiating the conspiracy among the accused for the commission of the crime;
(x) non-explanation by the fourth accused for his visit to Madras from Goa and

his presence with the first accused at Golden Cafe, where counterfeit US Dollars were seized; and
(xi)the US Dollars of 20 denomination recovered from the accused by P.W.19 in the course of the investigation were all found to be counterfeit US Dollars, as opined by the Special Agent, United States Secret Service, Honolulu Field Office, Honolulu, Hawaii, vide Ex.P16.

19. The above facts and circumstances derived out of the incriminating evidence relied upon by the prosecution would go to show that the charges against each of the accused were proved beyond all reasonable doubts.

20. Hence, Point No:2 is answered affirmative.

XII - RESULT

In the result, the appeals fail and are, therefore, dismissed.

Index : Yes 10.4.2003.
Internet : Yes

kpl/sasi/ksv

To:
1. State rep. by Inspector of Police, C.B.C.I.D. Chennai.
2. The Public Prosecutor, High Court, Chennai.

kpl/sasi/ksv